



INFORMATION REPORT

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| TO: | Mayor and Members of Council |
| COMMITTEE DATE: | October 14, 2020 |
| SUBJECT/REPORT NO: | Integrity Commissioner Follow-Up (FCS20086(a)) (City Wide) |
| WARD(S) AFFECTED: | City Wide |
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| SUBMITTED BY: | Andrea Holland City Clerk, Office of the City Clerk |
| SIGNATURE: | |

COUNCIL DIRECTION – N/A

INFORMATION

We have received a number of questions from Members of Council and correspondence to Council related to the recent Integrity Commissioner (IC) investigation. Questions have centered around the report, the review process, jurisdiction areas, and if advisory committees can be considered local boards.

Common questions the City has been receiving relate to:

- Whether an advisory committee can be considered a local board under legislation mandating municipalities to have Integrity Commissioner
- The authority of the Integrity Commissioner to investigate a member of an advisory committee
- The recourse if the respondent or others question whether the Integrity Commissioner acted within the Legislation
- The appropriateness of going to the Integrity Commissioner for an issue that involved a code of conduct breach for a council appointee
- The appropriateness of the City doing a privacy breach investigation for the inappropriate release of information on its website and the same information that the member of an advisory committee was investigated by the Integrity Commissioner

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

- Why the City changed the information on its Integrity Commissioner website to include advisory committees in March 2020 when the website did not previously include that demonstration. Whether it was a coincidence that the IC investigation into an advisory committee started around the same time

Answers to those questions include:

Local Boards and Advisory Committees:

In its definitions, the Ontario Municipal Act defines local boards as “a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under the Act ...”

Council’s Procedural By-Law definition: “Committee” means a Standing Committee, Sub-Committee, Selection Committee or an Advisory Committee or Task Force established by Council from time to time.

Authority of an IC to investigate a member of an advisory committee member:

In March of 2019, the Government of Ontario passed Bill 68, a bill to update the Municipal Act. The new legislation made it mandatory for all municipalities to have a code of conduct for Councils and local boards. The legislation also made it mandatory for municipalities to have an Integrity Commissioner who could investigate complaints into members of Councils and local boards.

Recourse available for someone who questions whether the Integrity Commissioner acted within the Legislation:

If there are concerns with how an IC process is conducted, those complaints can be directed to the [Ontario Ombudsman](#) (Appendix A), who has the authority to review the case and consider whether the IC acted fairly, followed relevant legislation, considered all the information, and provided sufficient reasons for their decisions.

The appropriateness of going to the IC for a matter that involved a privacy breach

The complaint against the chair of the LGBTQ advisory committee was referred to the IC as there were concerns that multiple areas of the advisory committee code of conduct was breached. One area included the deliberate decision to release information after being informed by the City Clerk’s office on multiple occasions that the information in question was considered private under MFIPPA. The scope of the agreement of the current Integrity Commissioner covers boards and committees in line with the Municipal Act. Under the ACT, members of those bodies are held to a Code of Conduct and the Conflict of Interest Act. Those members need access to the Integrity Commissioner if they have questions regarding the Conflict of Interest and to receive the Integrity Commissioner’s written advice on their questions. Also, any inquiries or complaints into member compliance with the Code of Conduct or Conflict of Interest (by a member,

council or the public) need to be addressed by the Integrity Commissioner as per the Municipal Act.

Prior to the investigation commencing, the IC confirmed that the matter fell under their purview with the City.

The appropriateness of the City doing a privacy review on its breach while using the IC to investigate the chair of the advisory committee

The incident involving the release of private information on the City's website due to an issue with eScribe and did not involve a member of a board, committee, or member of Council and therefore does not fall under the IC's purview. Furthermore, the sole issue under consideration regarding the website was the release of private information. Under MFIPPA, Council is designated as the HEAD and can delegate the administration of the Act. By By-Law, the City Clerk has been delegated by Council to administer the Act. The City Clerk only has authority over the corporation's use of information and does not have the authority over citizen advisory committee members, those committees are accountable to Council. Any privacy breach that occurs with information that the corporation has custody over, is investigated following the guidelines of the IPC by the Manager of Corporate Records and Freedom of Information.

The appropriateness of the City changing the IC section of its website in March 2020

The City should have changed the IC section of its website to include references to boards and committees in line with the Municipal Act changes that occurred in March 2019. It was only updated in March of 2020 to reflect updates to the Act and the agreement with the City's current IC, who was permanently appointed on February 26, 2020.

APPENDICES AND SCHEDULES ATTACHED

Appendix A - Ombudsman - Codes of Conduct and Integrity Commissioners

Codes of Conduct and Integrity Commissioners

Every municipality should have a **Code of Conduct** that applies to members of council, local boards and committees.

The Code of Conduct should include a public complaint process. The municipality should appoint an impartial **Integrity Commissioner** to review these complaints.

The Code of Conduct should be:

- Approved by council
- Posted publicly
- Used to train members

There should be **no fee or other barrier** to make a complaint to the Integrity Commissioner.

Integrity Commissioners can be authorized to dismiss complaints that are frivolous or vexatious.



Complaints can be brought to the **Ontario Ombudsman** as a last resort – that is, if the locally-appointed Integrity Commissioner has reviewed the matter or declined to do so, and the complainant is not satisfied.

The Ombudsman's review in such cases will consider whether the local Integrity Commissioner:

- Acted in accordance with relevant legislation
- Considered the issues presented
- Followed a fair practice
- Obtained and considered relevant information
- Provided sufficient reasons to support their decision based on the available evidence

Questions? info@ombudsman.on.ca

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